

ATTACHMENT 1

COMPLAINT FORM

(for non-prisoner filers without lawyers)

In the United States District Court for the Western District of Wisconsin.

Full name of Plaintiff

Nathan Dale McNaughton
838 Birch Court
Somerset, WI 54025

vs

22 CV 247 WMC

Full name of Defendants

The School District of Amery
543 Minneapolis Avenue S
Amery, WI 54001

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Case Number: _____
(to be supplied by clerk of court)

A. Parties

1. Plaintiff is a citizen of Wisconsin and resides at 838 Birch Court, Somerset, Wisconsin, 54025
2. Defendant School District of Amery is (if a person or private corporation) a citizen of Wisconsin and (if a person) resides at 543 Minneapolis Avenue South, Amery, Wisconsin, 54001

B. Statement of Claim

In May of 2020, I was offered a position with the School District of Amery, located in Amery, Wisconsin. During my employment, I disclosed a disability at least three times, including the dates of May 8, 2020, August 26, 2020, and November 23, 2020 to my immediate supervisor Oralee Schock. During each disclosure on August 26 and November 23, I requested accommodations from my immediate supervisor. During a November 23 observation, my immediate supervisor noted that I disclosed the disability in their notes of the observation where I asked her for help. Under 29 C.F.R §1630.2(o).3, the School District of Amery was required to initiate the interactive process after each disclosure but failed to do so each time. Instead, my immediate supervisor built up a file and repeatedly disciplined me for numerous issues related to my disability.

On November 25, 2020, I was required to quarantine following Coronavirus protocols. I was able to continue to teach and perform my job duties due to the students all participating in remote learning following district COVID protocols outlined in an email on October 19, 2020 and an email outlining my expectations while in quarantine on November 30, 2020. When I returned from quarantine on December 9, 2020, I had a meeting with my immediate supervisor. During this meeting I was forced to sign an absence slip even though I was able to complete my work tasks and functions while ill with coronavirus. Also during this meeting, I was disciplined and threatened with termination, citing numerous issues related to my disability which would not be an issue if the School District of Amery initiated the interactive process and provided reasonable accommodations. My immediate supervisor also stated that they were tired of hearing about my disability and personal health issues as they cited that I was to "limit personal health conversations" in my improvement plan.

Due to post Covid issues, my health continued to deteriorate in which I started missing work due to medical appointments. On February 4, 2021, my immediate supervisor sent me home due to concerns of my safety commuting to and from work with my acute cognitive issues. My immediate supervisor stated that my job and position are protected due to the Family and Medical Leave Act (FMLA) which was also confirmed by the Benefits and Payroll Specialist and School District Administrator. I was sent home with paperwork, which my immediate supervisor told me was FMLA paperwork. On February 15, 2021, my immediate supervisor sent me an email, providing me with paperwork for FMLA from the district, which I filled out and returned with the initial paperwork I was told was FMLA paperwork. The School District then failed to provide notices and requests following the requirements of FMLA. Even though I was not eligible for FMLA due to the length that I was employed with the district, since I was promised FMLA and left work relying on FMLA, I now fell under protections of FMLA (*Weissberg v. Chalfant Manufacturing Inc.*).

The School District of Amery then violated the following procedures pertaining to FMLA at the time of my leaving the building on FMLA. On February 4, 2021, the School District of Amery never determined if I was eligible or informed me that I was ineligible. Once I was on leave, until April 19, 2021, they classified my leave as FMLA to me in vocal and written communication. The School District never provided any notices in writing pertaining to my eligibility, rights, and responsibilities during FMLA and never went through the proper certification process. Once on FMLA leave, the school district failed to provide me with the required eligibility notice within five days as required by law and was still calling and designating my leave as FMLA when contacting me via email on February 15, 2021. The School District of Amery also failed to provide written notices of my rights and responsibilities during FMLA leave through mail. Finally, the School District of Amery never restored my position to the same or equivalent position at the conclusion because they had terminated my employment through constructive discharge. All of these actions constitute FMLA interference.

While on medical leave, I was continually called and harassed by my immediate supervisor and the district administrator. On February 26, 2021, the School District of Amery required me to

attend an in-person meeting at the district office. Once again, I was assured by the District Administrator and my immediate supervisor that my leave was protected under FMLA. The school district had yet to provide me any paperwork, communicate in writing indicating what was needed for certification of my absences outside of the February 15, 2021 email requesting my return of FMLA paperwork, which I complied. Also during this meeting, I was falsely disciplined for officiating a Varsity Girls Basketball contest on February 20, 2021 in Osceola. There was no contest in Osceola or involving Osceola High School on February 20, 2021.

On March 22, 2021, my immediate supervisor called, upset, harassing me for medical records and a doctor's note. I then received an email consisting only of a form authorizing my immediate supervisor unlimited access to all of my medical records. I provided my supervisor with a note from my doctor but refused to sign the authorization for release of my medical records until I spoke to an attorney. Due to the request providing unlimited access which would have provided information that was unrelated to my medical leave as I was legally allowed to refuse access to my medical records under protections of the Health Insurance Portability and Accountability Act (HIPAA).

On March 31, 2021, I was required to have another meeting with the District Administrator and my Immediate Supervisor over the phone. I was notified that my contract with the School District of Amery was being non-renewed citing three reasons; an enrollment decline at the Amery Intermediate School creating an overage of staff, performance issues documented by my immediate supervisor during the 2020-21 school year, and that I do not have the ability to be physically present with my intermediate students to instruct them. They also orally noted that my denial of their overarching request for my medical records played a huge role in their decision to non-renew my employment.

At the time of my non-renewal, the School District of Amery and Amery Intermediate School was not experiencing an overage of workers as they were actively seeking applications for a first grade teacher which was posted on March 31, 2021. On June 14, 2021, the School District of Amery hired a new staff member as an AIM Advisor, which is a classroom teacher. Documented issues with my performance can not be legally considered for non-renewal on March 31, 2021 due to the School District of Amery's failure to initiate the interactive process after my disclosures of disability on May 7, 2020, August 26, 2020, and November 23, 2020 unless they initiated the interactive process and made a legitimate attempt to provide reasonable accommodations. Finally, since I was on FMLA leave due to promissory estoppel since February 4, 2021 and I was under the impression that I was on FMLA, my position was legally protected at least until April 29, 2021. The School District of Amery can not legally make the determination that I would be physically unable to be present for the 2021-22 school year at least until April 30, 2021.

I requested in writing a hearing with the board of education to appeal my nonrenewal. On April 13, 2021, I received a phone call from the District Administrator which lasted 12 minutes. During this phone call I was harassed, bullied, and told that my only option was to resign otherwise he would make it highly unlikely that I would be able to work in education ever again.

He also indicated, with confidence, that I was not going to get a fair hearing from the board and the vote would be 5-0 in favor of non-renewal. On April 19, 2021, taking advantage of my acute cognitive decline, I was intimidated and coerced into signing a release and resignation agreement.

The actions of my immediate supervisor, the district administrator, and the School District of Amery constitute constructive discharge. The School District of Amery failed on numerous occasions to initiate the interactive process as required by the American's with Disabilities Act and instead continually documented performance issues that were related to my disability that would not have been an issue if they provided reasonable accommodations as required by law. Secondly, they sent me home under the impression that my position was protected by FMLA but had no intention of ever allowing me to return to work. Third, they harassed and bullied me into resigning and signing a release and resignation agreement which includes components which they have failed to honor.

The Release and Resignation Agreement is not valid because I resigned under duress. The District Administrator forced me into resigning and signing a release and resignation agreement. Secondly, the School District of Amery knowingly took advantage of my acute cognitive issues which I was experiencing when I was forced on medical leave on February 4, 2021 and entered into and signed the release and resignation agreement on April 19, 2022. Finally, the School District of Amery violated parts 2, 3, and 4 of the agreement. In Part 2, the School District failed to cooperate in receiving disability benefits from Madison National Life. At the time of the agreement, I had yet to receive any compensation from disability, only to receive compensation after I filed a complaint with the State Insurance Commissioner on July 14, 2021, receiving compensation on August 27, 2021. In Part 3, the School District of Amery failed to provide me any information or notices pertaining to COBRA. In Part 4, the School District of Amery failed to provide me with a letter of reference as promised in the agreement.

My immediate supervisor and district administrator forced me to resign and sign a release and resignation agreement because they did not want me to disclose to the school board that they opened up the School District of Amery to significant liabilities when they violated the Americans with Disabilities Act, misrepresented Family and Medical Leave Act to an employee, and retaliated against an employee who exercise their protections under the Health Insurance Portability and Accountability Act. Their failures to honor parts of the Release and Resignation Agreement further demonstrate their intent to constructively discharge my employment with the School District of Amery.

C. Jurisdiction

I am suing for a violation of federal law under 28 U.S.C. § 1331.

D. Relief Wanted

I am seeking the following components of my judgment if I win my lawsuit.

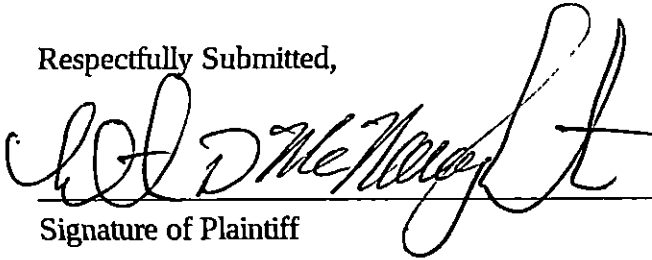
1. reinstatement of my position or an equivalent position with the School District of Amery.
2. monetary compensation for damages due to additional travel expenses acquired due to new employment which requires a further distance totaling 38 miles a work day, round-trip to Frederic Elementary School equally \$.585/mile for a 190 day school day for the 2020-21 and subsequent years until reinstated with the School District of Amery totaling \$4,223.70 per school year plus interest.
3. monetary compensation for damages due to salary difference for 2021-22 and subsequent school years, dependent on Amery School District's 2021-22 pay grade school compared to my current salary of \$42,000.00/year plus interest.
4. monetary compensation for emotional distress and expenses incurred while seeking new employment
5. monetary compensation for damages because of emotional distress due to harassment and a hostile workplace while employed and on FMLA leave
6. monetary compensation for damages because of emotional distress and lost wages due to violations of rights allowed by promissory estoppel of FMLA
7. monetary compensation for damages, due compensation, and lost wages due the School District of Amery's violations of the release and resignation agreement
8. monetary compensation for damages because of emotional distress due to violations of rights required by ADA
9. monetary compensation for damages because of emotional distress due to retaliating against me for protecting my of personal rights and protections afforded by HIPPA
10. monetary reimbursement for legal costs, court costs, and fees plus interest.
11. monetary reimbursement of medical costs due to lapse of coverage requiring me to meet an additional out of pocket maximum for the 2021 calendar year which I would not have incurred if not constructively discharged yet to be calculated plus interest.
12. monetary reimbursement for additional losses incurred or discovered prior to a settlement, judgment, or dismissal of this case.

E. JURY DEMAND

Jury Demanded-I want a jury to hear my case.

Dated this 2nd day of May, 2022

Respectfully Submitted,



Signature of Plaintiff

(715) 505-7635

Plaintiff's Telephone Number

mcnaughtonn@gmail.com

Plaintiff's Email Address

838 Birch Ct

Somerset, WI 54025

Mailing Address of Plaintiff